



November 8, 1999

Mr. Keith Vaughan
City Attorney
City of Angleton
P.O. Box 1326
Angleton, Texas 77516-1326

OR99-3145

Dear Mr. Vaughan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128722.

The Angleton Police Department (the “department”) received a request for, among other things, the “disciplinary action against and reason for termination of former Angleton Police Officer Luis Garcia.” You have submitted to this office as responsive to the request various police reports, internal memoranda, an affidavit, and other documents, which you claim are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right of privacy.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Upon review of the information at issue, we conclude that none of the information submitted to this office comports with this standard.¹ See Open Records

¹Portions of the several of the documents you submitted to this office are illegible. This ruling is limited to the information this office was able to decipher.

Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); *see also* Open Records Decision No. 611 (1992) (common law privacy does not, as a matter of law, protect all police records regarding domestic violence; such determination must be made on case-by-case basis). The department may not withhold any of the information at issue on privacy grounds. Because you have not raised any other exception to required public disclosure, the requested information must be released in its entirety, with the following exceptions.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.117 of the Government Code because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

It is not clear from the information you provided to this office whether the former police officer is currently a “peace officer” as defined by article 2.12 of the Code of Criminal Procedure. If he is, the department must withhold the information we have bracketed pursuant to section 552.117(2) of the Government Code, which makes confidential all information that relates to the home address, home telephone number, and social security number of a “peace officer” as well as information that reveals whether such a peace officer has family members.² Otherwise, the bracketed information also must be released, unless the officer made an election to keep this information confidential in accordance with section 552.024 of the Government Code prior to the department’s receipt of the current records request. *See* Open Records Decision No. 530 at 5 (1989) (applicability of section 552.117 must be determined at time request is made).

We also note that one of the records at issue consists of a medical record. The Texas Medical Practice Act (the “MPA”), V.T.C.S. article 4495b provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have marked the document that the department must withhold pursuant to article 4495b.

²Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Burn", written in a cursive style.

Michael J. Burn
Assistant Attorney General
Open Records Division

MJB/RWP/ch

Ref: ID# 128722

Encl. Submitted documents

cc: Mr. Michael Wright
The Facts
P.O. Box 549
Clute, Texas 77531
(w/o enclosures)